

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 2004-189

April 29, 2004

ACN COMMUNICATION SERVICES, INC.
Petition for Finding of Public Convenience
And Necessity to Provide Facilities-Based
Local Exchange Services

ORDER GRANTING AUTHORITY
TO PROVIDE UNE-P FACILITIES-
BASED LOCAL EXCHANGE SERVICE
AND APPROVING TERMS AND
CONDITIONS

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

In this Order, the Commission grants ACN COMMUNICATION SERVICES, INC. (ACN) the authority to provide UNE-P, facilities-based competitive local exchange service in the service area of Verizon-Maine.

I. APPROVAL OF APPLICATION TO SERVE

On March 11, 2004, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, ACN filed a petition with the Commission requesting expanded authority to provide facilities-based local exchange telephone service in Maine. In Docket No. 2000-165, ACN has previously obtained authority from the Commission to provide resold interexchange service. Therefore, ACN has previously provided reasonable information indicating that its financial and management capabilities are adequate to provide local services in Maine.

II. SERVICE TERRITORY

ACN requested authority to provide UNE-P facilities-based local exchange service in Maine. As a UNE-P provider, ACN will not need to obtain its own numbering resources. If ACN wishes to expand its facilities-based authority to include services requiring ACN to obtain its own numbering resources, it shall seek approval pursuant to 35-A M.R.S.A. §2102, requesting the Commission to amend this Order. Any such request must specify the specific exchanges where it proposes to offer service and include information establishing a readiness to provide facilities-based local exchange service within six months in the specifically identified areas.

III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES

We allow the terms and conditions proposed by ACN to go into effect. ACN has not used the Commission's standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's terms, conditions and rate schedules, and they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in ACN's terms and conditions

and the Commission's Rules or a statute, the rule or statute will control. Included in the Terms and Conditions is a provision stating that in the event of such a conflict, the statute or the Commission's rule will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of ACN's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by ACN to go into effect.

IV. INTERCONNECTION AGREEMENT(S)

In order to provide local exchange service, a competitive local exchange carrier must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for ACN's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153(37), the "rural exemption" of 47 U.S.C. § 251(f) will apply. All of Maine's independent incumbent local exchange carriers are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254 . . ."

If ACN executes an interconnect agreement(s) with an ILEC(s), it shall seek approval of that agreement by this Commission.

V. WAIVERS; REPORTING REQUIREMENTS

As a condition of providing local exchange service, ACN must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. ACN shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

The Commission grants ACN a waiver from the requirements of Chapter 210 of the Commission's Rules, which governs telephone utility accounting, and from 35-A M.R.S.A. §§ 707 and 708, which govern reorganizations and affiliated interests. Because ACN's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements. However, ACN must report its annual intrastate gross operating revenues and its annual intrastate minutes for use for the

purpose of determining its regulatory assessment and such other information requested by the Commission.¹ If ACN resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales.

In addition, ACN shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in Ordering Paragraph No. 3. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

VI. OTHER REQUIREMENTS

ACN shall comply with all applicable rules of the Commission and statutes of the State of Maine.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of ACN to provide UNE-P facilities-based competitive local exchange telephone service in the service area(s) of Verizon Maine; and

2. Exempt ACN from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year; and

3. Exempt ACN from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, provided that ACN shall notify the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of ACN or of any entity that owns more than 50% of ACN. ACN shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. ACN shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, ACN shall amend its rate schedules and terms and conditions to reflect any change in identity; and,

4. Order that ACN's proposed terms and conditions and rate schedules (Sections 1-7), attached to this Order, shall be effective on the date of this Order; and

¹The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

5. Order that ACN shall comply with all applicable rules of the Commission, including the requirement of Chapter 280 § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20%.

Dated at Augusta, Maine, this 29th day of April, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Diamond
Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.